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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/550,487	09/05/2006	Cecilia Dazzi	DAZZI I	2984
1444 7590 12/17/2007 BROWDY AND NEIMARK, P.L.L.C. 624 NINTH STREET, NW SUITE 300 WASHINGTON, DC 20001-5303			EXAMINER SANTOS, ROBERT G	
			ART UNIT 3673	PAPER NUMBER
			MAIL DATE 12/17/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/550,487

Applicant(s)

DAZZI, CECILIA

Examiner

Robert G. Santos

Art Unit

3673

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 05 October 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 19-36 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 19-36 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claim 19 is rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Pat. No. 5,037,436 to Heaston. Heaston shows the claimed limitations of a pillow (40) comprising a substantially oval annular resilient pillow main body (42, 44) (as shown in Figure 9 and as described in column 4, lines 36-39) having a central opening; and a resilient pillow secondary body (46) of elongate shape, located transversely to the opening of the main body, thereby defining a pair of recesses (52, 54), the recesses being tapered (as shown in Figures 10 & 11).

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 19-21 and 29-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Des. Pat. No. 220,823 to Howe et al. As concerns claim 19, Howe et al. show the claimed limitations of a pillow comprising a resilient main body (since Figure 7 shows the drawing

symbol for sponge rubber) having a central opening and a resting surface (as shown in Figures 1 & 6) and a pillow secondary body of elongated shape located transversely to the opening of the main body thereby defining recesses (also as shown in Figures 1 & 6), the recesses being tapered (also as shown in Figure 7). However, Howe et al. do not specifically disclose a condition wherein the pillow is substantially oval and annular. The skilled artisan would have found it obvious at the time the invention was made to provide the pillow of Howe et al. with a substantially oval annular outline since such a modification would have generally been considered as being within the level of ordinary skill in the art.

With regards to claims 20, 21, 30 and 31, the examiner respectfully asserts that the pillow of Howe et al. is inherently capable of being positioned such that the resting surface is raised at the chest diaphragm of a user with respect to the resting surface at the user's neck zone wherein the main body has a thickness at the user's diaphragm and at its side portions that is greater with respect to the thickness at the user's neck zone due to the wedge-shaped cross section of the pillow as shown in Figures 3 & 6. As concerns claims 29 and 32, Howe et al. clearly show conditions wherein the pillow secondary body with the pillow main body forms a homogeneous resting surface and wherein the recesses determined by the pillow main body and secondary body internally have concave side surfaces in Figures 1, 3, 6 & 7.

5. Claims 22, 27 and 33-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Howe et al. '823 in view of U.S. Pat. No. 5,095,569 to Glenn. Howe et al. do not specifically disclose a condition wherein the main body is deformable; furthermore, Howe et al. do not disclose the use of a structural element for keeping the shape of the pillow and a substantially

anallergic, transpiring and natural fiber-based fabric such as cotton covering the main body and secondary body. Glenn provides the basic teaching of a support pillow (16) formed from foam (as described in column 3, lines 45-47) and including securing straps (34-37) fastened about the body of the pillow and a cotton fabric cover sheet (10). The skilled artisan would have found it obvious at the time the invention was made to provide the pillow of Howe et al. with a deformable main body in order to provide enhanced user comfort; the skilled artisan would have also found it obvious at the time the invention was made to provide the pillow of Howe et al. with a structural element for keeping the shape of the pillow and a cotton fabric covering the main body and secondary body in order to ensure further proper support for the user and to “protect the pillow and provide selective comfort to the user” (see Glenn ‘569, column 1, lines 50-53).

6. Claims 23-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Howe et al. ‘823 in view of Glenn ‘569, and further in view of U.S. Pat. No. 3,941,418 to Bernard. Howe et al., as modified by Glenn, do not specifically disclose a condition wherein the structural element has a rigidity greater than the main body and consists of a rope-shaped or tubular annular core internal to the pillow main body and located in a substantially central location of the main body. Bernard provides the basic teaching of a support pillow (16) comprising a structural element (10) having a rigidity greater than the main body of the pillow (as described in column 2, lines 12-19) and consisting of a rope-shaped or tubular annular core internal to the pillow main body and located in a substantially central location of the main body (as shown in Figures 1, 3a & 3b). The skilled artisan would have found it obvious at the time the invention was made to provide

the pillow of Howe et al., as modified by Glenn, with a structural element having a rigidity greater than the main body and consisting of a rope-shaped or tubular annular core internal to the pillow main body and located in a substantially central location of the main body in order to provide a simple and economical means for imparting additional firmness to the pillow as desired.

7. Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Howe et al. '823 in view of Glenn '569 and Bernard '418, and further in view of U.S. Pat. No. 3,051,601 to Schick. Howe et al., as modified by Glenn and as further modified by Bernard, do not specifically disclose a condition wherein the structural element comprises a layer of greater rigidity located at the base portion of the main body. Schick provides the basic teaching of a support pillow (1) provided with a main body (2) and layer of greater rigidity (3) attached to the base portion of the main body. The skilled artisan would have found it obvious at the time the invention was made to provide the pillow of Howe et al., as modified by Glenn and as further modified by Bernard, with a structural element comprising a layer of greater rigidity located at the base portion of the main body in order to impart additional strength and resiliency to the pillow, thereby also helping to provide enhanced user comfort and support (see Schick et al. '601, column 1, lines 53-54).

8. Claim 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over Howe et al. '823 in view of Schick '601. Howe et al. do not specifically disclose a condition wherein the elasticity and softness of the pillow main body decreases from the chest resting surface to the

base portion. Schick provides the basic teaching of a support pillow (1) comprising a main body (2, 3) having an elasticity and softness that decreases from the top surface to the base portion thereof (see Figures 1 & 2; column 1, lines 64-65; and column 2, lines 1-7). The skilled artisan would have found it obvious at the time the invention was made to provide the pillow of Howe et al. with a pillow main body having an elasticity and softness that decreases from the chest resting surface to the base portion in order to provide a pillow structure “having a good balance of desirable properties, such as resistance to humidity aging, load carrying capacity, strength and resiliency” (see Schick ‘601, column 1, lines 50-54).

***Response to Amendment***

In response to Applicant's arguments on page 7 of her amendment concerning the Heaston '436 reference, the examiner respectfully disagrees since it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987). Hence, the claim rejections under Heaston '436 have been respectfully maintained.

Moreover, in response to Applicant's arguments on page 8 of her amendment regarding the Howe et al. '823 reference, the examiner also respectfully disagrees and respectfully maintains that the modification of simply changing the shape of the outline of a pillow would have generally been considered as involving routine skill in the art. Hence, the claim rejections under Howe et al. '823 have also been respectfully maintained.

Lastly, in response to Applicant's arguments on page 9 of her amendment stating that Bernard '418 is nonanalogous art, it has been held that the determination that a reference is from a nonanalogous art is twofold. First we decide if the reference is within the field of the inventor's endeavor. If it is not, we proceed to determine whether the reference is reasonably pertinent to the particular problem with which the inventor was involved. *In re Wood*, 202 USPQ 171, 174. In this case, Bernard clearly discloses the use of a support pillow including an internal annular core that imparts additional firmness to the pillow; accordingly, the Bernard reference is considered to be reasonably pertinent to the particular problem with which the inventor was involved. Hence, the claim rejections under Bernard '418 have also been respectfully maintained.



*Conclusion*

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Dazzi '240.

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert G. Santos whose telephone number is (571) 272-7048. The examiner can normally be reached on Tues-Fr and first Mondays, 10:30 a.m. to 8:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia L. Engle can be reached on (571) 272-6660. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Robert G. Santos  
Primary Examiner  
Art Unit 3673

R.S.  
December 10, 2007